IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 636 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
LAKHABHAI VEJABHAI ODEDARA (MER)

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Appearance :
MR KP RAVAL, APP for Appellant
MR KETAN I ACHARYA for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] Leave to appeal is granted. Appeal is admitted. Learned advocate Mr.K.I.Acharya waives service on behalf of the respondent.

[2] The instant appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the learned Special Judge and Additional Sessions Judge, 5th Fast Track Court, Veraval on 01.10.2004 in Atrocity Case No.184/1999 (39/1998) whereby the present respondent being accused of the said Sessions Case came to be acquitted by the trial Court for the charges levelled against him under Sections 323, 504, 506(2) of the Indian Penal Code as well as under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[3] Learned APP Mr.K.P.Raval for the appellant – State and learned advocate Mr.K.I.Acharya for the respondent requested this Court to take up this matter for final hearing as Record and Proceedings of the trial Court is available with this Court and they undertook to provide extra copies of the evidence and documents produced on record during the trial. In the facts and circumstances of the case, the request is

granted and the appeal is heard finally.

[4] The prosecution case as has been disclosed can briefly be stated that the complainant – Amarsibhai Arjanbhai belonging to Scheduled Castes had been a Member of the Gram Panchayat before 8 years. On the day of the incident i.e. On 17.10.1996 at about 4.30 p.m, he had been to Panchayat office because his wife conveyed to him that employees of Panchayat Office had been to his house and they intended to take measurement. At that time, one Jitubhai and Virabhai Deshabhai were present and accused also was present. The complainant inquired from them that why had they been to his house for measurement. They replied that an application was received by Panchayat against the complainant and that house was under illegal construction and was required to be removed. He was given time of 7 days to produce the evidence on record. The complainant, thereafter, asked for a copy of the said application from the accused and accused stated that the copy would not be given to him and he was excited and some altercation took place and accused caught hold of the complainant by neck and slapped him. A scuffle ensued. There was one tray which was hit by accused on right side of abdomen of the complainant and Jitubhai and Virabhai

Deshabhai intervened and the complainant was set free. Thereafter, accused threatened the complainant that if ever he had placed his foot in the office, he would be done to death and accused insulted his Caste. Thereafter, he went to the Hospital for treatment and filed a complaint before Talala Police Station at about 19.10 hours. From the said complaint, Investigating Officer Mr.K.D.Parmar investigated the crime registered against the accused and a charge-sheet came to be filed in the Court of learned Judicial Magistrate, First Class at Veraval which was registered as Criminal Case No.4996/1996. The said Criminal Case, thereafter, was committed to the Court of Sessions and was made over to Special Judge. The Special Judge framed charges against the accused vide Ex.4 on 12.04.2004 to which accused pleaded not guilty and hence, the respondent was put to trial. The prosecution examined as many as 6 witnesses and produced on record documentary evidence to prove its case. When the prosecution evidence was over, the learned trial Judge recorded the statement of the accused bringing to his notice incriminating circumstances in evidence under Section 313 of the Code of Criminal Procedure. Learned trial Judge, thereafter, heard the prosecution as well as defence and came to the above conclusion and hence, this appeal.

[5] Learned APP Mr.K.P.Raval for the appellant – State and learned advocate Mr.K.I.Acharya for the respondent were heard in detail in respect of this application.

[6] We have gone through the Record & Proceedings of the trial Court thoroughly. We have considered vital features of the matter and reasonable probabilities arising out of the circumstances of the case. We have re-appreciated the evidence to assess the conclusion arrived at by the trial Court for acquittal. We have scanned the reasons assigned by the trial Court for the above said judgment and order. We have also taken into consideration the contentions raised by learned APP for the appellant – State and learned advocate for the respondent in this appeal.

[7] Going through the Record & Proceedings of the trial Court, it clearly appears that P.W.1 - Amarsibhai Arjanbhai, complainant examined at Ex.8 stated about the incident in his examination-in-chef to the extent that he visited Panchayat Office for inquiring about the application which was received by the Panchayat, upon which the measurement was ordered by Panchayat. The accused got excited when the complainant asked for the application and scuffle was ensued

in which complainant received some injury. He has been cross-examined by the defence in which mainly he stated that Talala Police Station was situated very near to Gram Panchayat Office. Though he denied the allegation that the complaint was filed after 4.00 hours, after due consideration. He admitted that for the same offence, the accused had also filed one complaint. He denied the allegation that he had encroached the Panchayat land, near Narsinh Tekari. He denied the allegation that on the contrary, when he was informed about the application filed by the accused against him, he got excited and attempted to abuse the accused and started beating him and he caused injury on the head of the accused by throwing paper weight. The complaint is produced at Ex.9. Panchnama of scene of offence is produced at Ex.11. P.W.2 – Virabhai Deshabhai Kathad examined at Ex.12 and P.W.3 – Jitendrabhai Jethabhai examined at Ex.13 were eye witnesses of the incident and both of them did not support the say of the prosecution case. They stated that while they were sitting in the Chamber of Sarpanch of Gram Panchayat, Amarsinh – complainant and accused – Lakhabhai came there and they were talking to each other. Both of them got excited and the witnesses intervened. They were declared as hostile. Ex.16, medical certificate in respect of injury received by the

complainant is produced and accordingly, he had abrasion on right side of abdomen and middle region and complained of severe pain at abdomen. This certificate was issued by Medical Officer, Community Health Centre, Talala (GIR). Ex.17, the certificate of Caste is produced to denote that the complainant belonging to Scheduled Caste. P.W.4 – Dr.Dhirajlal Laljibhai Dummar examined at Ex.18, stated that on 17.10.1996 at about 5.45 p.m, while he was serving as Medical Officer, Amarsibhai – complainant came to him for treatment. In history, the complainant stated that he was beaten by the accused by throwing a tin tray. He had abrasion on right side middle portion of the abdomen and complained of pain. He was given primary treatment. The patient was referred to Veraval Municipal Hospital. He admitted in his cross-examination that in certificate issued at Ex.14, case history was given by the complainant, had not been noted. P.W.5 – Khumansinh Devibha Parmar examined at Ex.20, Investigating Officer and was serving at Talala Police Station at relevant juncture. The investigation of this case was entrusted to him. He drew panchnama of scene of offence and recorded the statement of the accused. He has been cross-examined by the defence. Last witness P.W.6 – Malabhai Bodabhai Bamaniya examined at Ex.29, was serving as P.S.O.

at Talala Police Station at relevant juncture. He received a complaint of the complainant at 19.10 hours which was registered as II – 109/96 and investigation was handed over to Mr.K.D.Parmar. He also stated that against the complainant also, the accused had filed complaint for the same incident and separate charge-sheets were submitted against the complainant as well as accused.

[8] From the above evidence, what transpires to us on re-appreciating the evidence is that for the same incident, accused had also filed a complaint against the present complainant in which he had caused injury to present accused. That Sessions Case No.38/2004 as has been noted by the trial Court in his judgment was proceeded against the present complainant wherein it was stated by the prosecution that while, Lakhabhai – accused in this case was ascertaining through measurement about the encroachment in Panchayat land, the present complainant caused obstruction and, therefore, a quarrel had ensued. In the said Sessions Case, the present complaint was convicted. The fact remains that in the said incident, the present accused was also injured. However, in the present Sessions Case, these injuries are not explained by the prosecution through any witnesses, even complainant

narrates the incident in different manner. In these circumstances, when it is doubtful that the complainant deposed truth before the Court, he needs corroboration from other circumstances. In this case, other two eye witnesses to whom the prosecution has examined, have turned hostile and have not supported the prosecution case. From the evidence of P.W.6 – Malabhai Bodabhai Bamaniya, it becomes clear that for the same incident, the accused had also filed a complaint which resulted in conviction of the present complainant. In these circumstances, no reliance can be placed upon the only witness i.e. Complainant, even if he is an injured and his injuries are sought to be proved. This is so because when none of the witnesses states about any injury caused to the accused in the same incident. It leads to infer that the prosecution witnesses suppressed the genesis of the incident and they are not credible. Let alone other contradiction brought on record and advanced by the defence as discussed by the trial Court in the judgment and order impugned, it clearly appears that the case of the prosecution for the above reasons becomes doubtful and the only witness i.e. complainant cannot be relied upon to come to the conclusion that the accused had committed the crime beyond reasonable doubt.

[9] The trial Court assigned the similar reasons for acquitting the accused which we have gone through threadbare. In appeals against the order of acquittal, though legitimate second view which may be possible from the same evidence recorded during the trial than taken by the trial Court. But unless it is established that the conclusions arrived at about the trial Court are perverse, manifestly erroneous or palpably wrong, no interference is permitted in the orders of acquittal. While going through the judgment and order and the reasons assigned by the trial Court and the conclusion arrived at by the trial Court, it could not be said that the reasons assigned by the trial Court for acquittal are perverse or manifestly erroneous or against the evidence recorded during the trial. In this view of the matter, no interference is warranted in the judgment and order impugned in this appeal and hence, the following order.

ORDER

Appeal stands dismissed.

[J. R. VORA,J.]

[M. R. SHAH,J.]

(vijay)